COURT OF APPEALS DIV.II

STATE OF WASHINGTON

KEN L. KYLLO,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

NO. 51732-9-II

AMENDED MOTION FOR STATEMENT OF ADDITIONAL GROUNDS

I. INDENTITY OF PETITIONER

I, Ken L. Kyllo, Petitioner pro se, move the Clerk of this Court for relief sought in Part II of this Motion.

II. STATEMENT OF RELIEF SOUGHT

Petitioner moves for this type written Statement Of Additional Grounds to replace the original hand written briefing of the same.

III. SUPPORTING FACTS

Petitioner is acting pro se, without professional legal assistance and is limited to the correctional facility law library system and no access to this type written format. As such, Petitioner has since acquired additional relevant facts and authorities allowing this more concise and clearer version. If this Court does not choose to accept this typed version of issues, Petitioner moves the Court to atttach such as addendum to the original briefing.

EXECUTED this 22nd day of April, 2019 at Aberdeen, Washington.

Ken Kyllo

Ken L. Kyllo DOC#294467 H5-B/38L
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA. 98520

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION TWO

KENNETH KYLLO, Appellant, v. STATE OF WASHINGTON, Respondent,	CAUSE No. 51732-9-II STATEMENT OF ADDITIONAL GROUNDS

Under Case No. 51732-9-2/17-1-00506-9

Appellant Kyllo filed a pro-se RAP 10.10 Statement for additional grounds for review and to be added with appellate counsel's opening brief Attorney Jody R. Backlund and Manik R. Mistry Dated September 20th, 2018.

Mr. Kyllo is asking this court to accept the following additional grounds to be coupled with his initial statement of additional grounds (RAP 10.10).

The following ground raises several Constitutional questions of law that Mr. Kyllo would be remiss if not adding to his brief for review. Mr. Kyllo asks this court to also understand that he was not in possession of the attached copy of arrestie information and probable cause prior to his initial RAP 10.10 statement of additional grounds and was unable to include this ground for review.

See attached appendix

Pursuant to RAP 10.10 and 2.5 (a)(3) an appellant may raise a due process violation for the first time on appeal, he need only make a plausible showing that the error... had a practical and identifiable consequence in the trial. State v. Lamar, 180 Wn.2d 576-583, 327 pg. 3d 46 (2014). An error has practical and identifiable consequences if "given what trial court knew at the time the court could have corrected the error." State v. Oltara, 167 wn.2d 91, 100, 217 pg.3d 756 (2009), as corrected (January 2010). Here, given what the trial judge knew, the court could have corrected the constitutional error Id.

Mr. Kyllo asks the court to review the following facts and arguments and questions.

Prior to a warrant being issued, an informant claimed appellant, Mr. Kyllo, was in possession of heroin (see Counsel's opening brief).

Included in counsel's opening brief introduction and summary of argument you will see that the informant claimed to have seen heroin in a Cowlitz county hotel room and without explanation the informant claimed the drugs belonged to Kenneth Kyllo (page 5 of counsel's opening brief). Counsel's brief further explains in her statement of facts and prior proceedings that in April of 2017 police sought a search warrant for a hotel room cp 1-7, it states they used a confidential informant cp 4-6 in their application for a search warrant, the informant was not named nor was any other tracking information listed regarding the informant cp 1-7. The informant claimed to have seen a large amount of heroin in the hotel room cp6. This heroin was seen 72 hours before it was reported by the confidential informant to the police cp6, as noted in opening brief of counsel for applicant pg.7.

Counsel goes on to say the confidential informant did not testify at trial Rp (2/15/18) 212; (2/16/18) 16-46. Throughout the entire trial process, all

testimony used to infer Mr. Kyllo's guilt was inferred by an informant who was alleged to have given information to the police to obtain probable cause for Mr. Kyllo's arrest. Mr. Kyllo was not named in probable cause. At no time was Mr. Kyllo given an opportunity to confront this accuser. Throughout the entire trial, the prosecution and all state witnesses gave testimony regarding items taken from the hotel room, items stemming from information initially obtained from a confidential informant. At no time did Mr. Kyllo have any opportunity to confront the confidential informant. The 6th amendment to the constitution provides that in all prosecutions, the accused shall enjoy the right to be confronted with the witness against him "Similarly Article 1, section 22 of the Washington Constitution provides that the accused shall have the right to meet the witnesses against him face to face."

The meaning of the Parallel Clause is substantially the same State v. Ivi, 179 wn.2d 457, 468, 315 pg. 3d 493 (2014); State v. Sandaval, 137 wn.App 532, 154 p.3d 271 (2007); Melendez-Diaz v. Massachusetts, 557 v.s. 305, 129 S.Ct. 2527, 174 Ed.2d (2009) p.3d 479; Crawford v. Washington, 541 v.s. 36 124 S.Ct. 1354 L.Ed.2d 177 (2004).

The United States Supreme Court held that the confrontation clause bars "admission of testimonial statements of a witness who did not appear at the trial unless he was unavailable to testify and the defendant had had prior opportunity for cross examination." Crawford, 541 v.s. At 53-54.

In Davis v. Washington, 547 v.s. 813, 822 126 S.Ct. 2266, 165 L.E.d 2d 224 (2006) the court set forth what has come to be known as the primary purpose test that statements are not testimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of interrogation is to enable police assistance to meet an ongoing

emergency. They are testimonial when there is no such ongoing emergency and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution (See also State v. Kaslowski).

The court held a defendant's right to confrontation was violated when the officers testified about statements made to them by the victim. The admission was not harmless error.

In this case, all the State's witnesses testimony was predicated upon the confidential informant that was used to obtain probable cause to search (see also State v. Johnson, 61 Wa.App 539, 811 P.2d 687 (1991).

Delaware v. Van Arsdall, 475 v.s. 673, 89 L.Ed 2d 674, 106 S.Ct. (1986). Denial of respondents opportunity to impeach the prosecution's witness for bias violated respondent's rights under the confrontation clause and was not harmless. By not performing due diligence to produce and to testify before the jury, the court was shielding the jury from the entire truth of the matter. The jury should have been given the opportunity to evaluate their own informed opinions based on cross examination of informant. Had Mr. Kyllo been allowed to cross examine his accuser, the trier of facts may have ruled differently. Crawford posed 3 questions of law:

1) What constitutes testimonial evidence?

2) When, if ever, may the testimonial statement of an unavailable declarant be admitted against a criminal defendant?

3) What Constitutional safeguards apply to the admission of nontestimonial hearsay statements?

Mr. Kyllo also asks the following questions:

Was it error when the police testified to information gathered by an

informant but shielding the identity of the confidential informant from cross examination?

Was Mr. Kyllo's Fifth and Fourteenth Constitutional right to a fair trial and due process violated by not allowing the jury to hear all the facts by shielding the identity of his accuser?

Was the testimony given by the state's witnesses inadmissible hearsay, since the appellant was denied cross examination?

Did the trial court error in allowing testimony that violated Mr. Kyllo's right to be confronted with the confidential witness information used against him?

The Supreme Court stated in Crawford v. Washington that the confrontation clause "applies to" witnesses "against the accused in other words, those who bear testimony" 541 v.s. 36, 158 L.Ed.2d 177 (2004). Testimony, in turn, is typically a solemn declaration or affirmation made for the purpose of establishing or proving some fact Id. The confrontation clause arguments are reviewed denovo, United States v. Nguyen, 565 F.3d 668, 673 (9th Cir. 2009).

No information of confidential informant was given to Mr. Kyllo prior to trial. Had Mr. Kyllo been privy to his accuser who was inferring his guilt, Mr. Kyllo may have utilized the opportunity to cross examine the informant and tease out facts suppressed from the trier of fact and record. By the state suppressing the identity of Mr. Kyllo's accuser, he was denied the opportunity to impeach the informant. Was this identity intentionally withheld do to unsavory impeachable prior crimes or acts of dishonesty and/or possible manipulation of evidence to lend credence to the establishment of the information given to government officials to arrest Mr. Kyllo?

What prior acts of dishonesty had been shielded from the jury by

confidential informant?

Was the informant using drugs at the time they gave information?

Was the informant given monetary payment or cash in exchange for information?

Should the trier of facts been allowed to hear what compensation motivated the confidential informant for his/her information to police?

The record is clear; The confidential informant did not testify at trial RP (2/15/18) 81-212; RP (2/16/18) 16-46.

Not only was Mr. Kyllo denied an opportunity to cross examine the state's confidential informant in front of the trier of fact, the trial court and record was further prejudiced and Mr. Kyllo by allowing the state to elicit information/testimony that was prejudicial (2/15/18) 61-63 Mr. Kyllo cites following record as example to show a record of how the court allowed the state and all state's witnesses to testify to alleged information that was allegedly obtained by a confidential informant. Sargent Yund testified RP 2/15/18 163, in fact, Yund claimed that police knew "that Mr. Kyllo and drugs were in the hotel room" RP (2/15/18) 163. The fourth witness did the same; Detective Thoma said that law enforcement went there to find Mr. Kyllo and controlled substances RP (2/15/18) 174-1894. As counsel had already stated in opening brief previously filed, the state's witnesses comments were highly prejudicial to Mr. Kyllo's defense. Mr. Kyllo feels the court should also review the prejudicial testimony as well on the merits argued above. Mr. Kyllo should have been allowed to cross examine the source of information, testified to by state's witnesses, provided by the alleged informant.

Mr. Kyllo asks this court to add this argument to his previously filed statement of additional grounds for review.

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION TWO

KENNETH KYLLO, Appellant, v. STATE OF WASHINGTON, Respondent,	CAUSE No. 51732-9-II ADDENDUM TO STATEMENT OF ADDITIONAL GROUNDS

STATEMENT OF FACTS/PRIOR PROCEEDINGS

Mr. Kyllo asks that this court include these additional facts and grounds in addition to counsel's introduction and summary of argument. Discussed in counsel's opening brief pages 4-5. Mr. Kyllo also requests in conjunction with these added facts that this court include counsel's statement of facts and prior proceedings, pages 5-10.

Suppressed from the record at the time of arrest, while still at the hotel, Mr. Kyllo was read his Miranda Rights. Mr. Kyllo stated he wished to remain silent and speak to an attorney. Questioning stopped. Mr. Kyllo was taken to Cowlitz County Jail and was booked on charges stated in cause. Mr. Kyllo went to court and was appointed counsel but while still in custody, he was led from his cell under the false pretext that his newly appointed counsel, had come to see him. Instead, a government official, sent by the prosecutor, pushed papers

in front of Mr. Kyllo and told him to sign them. At no time during this interrogation was Mr. Kyllo represented by counsel. It is obvious the entire event was orchestrated to acquire basis to infer Mr. Kyllo's guilt. Also, the facts suppressed are during this second in-custody interrogation. Mr. Kyllo had already been appointed counsel and had never waived his right to counsel after his initial request to talk to an attorney and remain silent.

STATEMENT OF ADDITIONAL GROUNDS

GROUND ONE

The appellant, Mr. Kyllo, asks this court to review the cumulative effect of all errors addressed in both counsel brief and appellants statements of additional grounds, pursuant to mark the v. Bladgett, 970 F.2d G14, 622 (9th Cir. 2007). The cumulative effect of multiple trial-type Constitutionally infirm even if the errors, considered individually, would not be considered harmful. See also State .v Weber, 159 Wn.2d Wa.2d 252, 239 p.3d G45 (2006), citing Brown v. United States, 411 U.S. 223, 23-32.

GROUND TWO

Nowhere in the record was real evidence given to support Mr. Kyllo's conviction. Had the state not unethically offered Mr. Kyllo seized money "after" his arrest, there was nothing in the state's arsenal meeting the elements to sustain the crime charged. The state only obtained a guilty verdict through courtroom theatrics, suppression of evidence and inference. Please consider the following verbatim report of the record and authority in support of Mr. Kyllo.

VERBATIM REPORT OF PROCEEDINGS

Attorney for Mr. Kyllo asked Detective Thoma the following:

Baldwin: okay and is the person the money was seized from notified of that

seizure (VRp 182)?

Detective Thoma: yes they are given a sheet that outlines the steps they need to go through to contest the seizure, time frame, things like that. (VRp February 15th, 2018, at 182).

What counsel failed to ask Detective Thoma was how was Mr. Kyllo notified, and/or was Mr. Kyllo's appointed counsel present or aware that his client was about to be served with papers to contest seized money. Had counsel teased these facts out of Detective Thoma during examination, the court would have been aware that Mr. Kyllo's Miranda Right's had been violated.

On direct examination of Mr. Kyllo (February 16th, 2018):

Baldwin: Detective Thoma testified that they sent you a notice that they intend to forfeit the money that was found in that backpack (VRp February 15th, 2018).

My. Kyllo's attorney failed to inquire into exactly how his client was served. Mr. Kyllo was not sent any notice and his attorney failed to make a diligent inquiry into the exact facts of the seizure situation. Mr. Kyllo would also like to point out that Detective Thoma's testimony is incorrect and misleading. Mr. Kyllo was not sent any notice; as previously stated, the seizure notice was hand delivered by Officer Kim Beedle to Mr. Kyllo. The offer was intended to entrap Mr. Kyllo. At the time of arrest there was nothing to substantiate charges. The offer of seized money was intended to infer to the jury Mr. Kyllo's guilt. Mr. Kyllo further testified:

Kyllo: Yes and I responded to that only because I was under the assumption that it had nothing to do with this case and I thought it would just be free money. It was never explained to me anything and once I realized it may be... it could be you know, looked at in that fashion I just gave it up. I never

went to the hearing after that (VRp February 16th, 2018, at 81).

Baldwin: So it is your testimony today that it was not your money?

Kyllo: It was not my money (VRp February, 16th, 2018, at 83).

Testimony of where wallet was, both Mr. Wiggin's wallet and Mr. Kyllo's wallets were removed and placed on the hotel room table and picture were taken. Mr. Kyllo testified to this fact during direct examination by counselor Baldwin (February 16th, 2018).

Baldwin: To the best of your recollection, aside from your wallet, was there anything in that hotel room that belonged to you?

Kyllo: NO and I was just a guest.

Baldwin: The testimony that your wallet was found on the table in the back of the room, when law enforcement entered the room, do you recall where your wallet was?

Kyllo: In my back pocket (VRp, at 84).

See also, opening brief of counsel page 7 concerning fingerprints found in backpack "not" of Mr. Kyllo.

Baldwin: You heard testimony that you were handcuffed!

Kyllo: Yes.

Baldwin: Do you recall an officer removing your wallet from your pocket?

Kyllo: Yes. (VRp at 84).

Baldwin: So to the best of your recollection you wallet was not on the table at the time they gained entry?

Kyllo: The officer placed it there before they took the picture (VRp February 16th, 2018, at 84).

Mr. Kyllo cites the following authority as a foundation to the above argument outlined in Ground Two. The State failed to meet its burden of proof

by a factual showing and or presentation of evidence at trial sufficient to establish the elements required by law to support a conviction as charged and or as instructed at trial. State v. Knapstad, 107 wn.2d (1986).

The evidence present within the record is insufficient for the jury to lawfully find that the defendant was factually unlawful possession of a controlled substance as defined under cause. State v. Callahan, 77 wn.2d 27, 459 p.2d 400 (1969).

The State did not present introduced and/or otherwise establish by showing of factual evidence before or at trial, that defendant had actual assignable right to dominion of real property subject to warrant, or that defendant had ever openly and/or knowingly possessed any unlawful articles and/or substances within his passing control. Where as disputed right of assignable dominion and/or actual fingerprint evidence of knowledgeable handling and open possession by other is present at trial. State v. Walcott, 72 wn.2d 959, 435 p.2d 994 (1967).

That presentation of circumstantial evidence and/or inferences, independent of elemental showing is insufficient to support lawful conclusion for guilty finding of possession. Where as the elemental requirement absent, the specific logical probability of criminal intent to deliver cannot manifest by the evidence presented. State v. Davis, 79 wn.App 591, 904 p.2d 306 (1995).

There was evidence discussed with John Donn about fingerprints found on paraphernalia inside the backpack. These prints did not belong to Mr. Kyllo (see VRp examination of John Dunn, also discussed in the appellate counsel's brief on page 7; also Rp 246-18, 48-58). The fingerprints belonged to the women in the hotel room. Rp (April 2nd, 2018) 100 (February 15-16, 2018).

Also, please consider the following authority:

United States of America

Plaintiff-Appellee v. Tommy Leonard

Defendant-Appellant

United States Court of Appeals for the

9th Cir. 671 Fed. appx. 531; (2016)

Court failed to apply appropriate legal standard in concluding that Leonard ConSovetidely possessed the stolen A-R 15. To demonstrate possession, the government must prove both access and knowledge of the item at issue. United States v. Kelso, 942 F.2d 680, 682 (9th Cir. 1991); United States v. Cazares, 121 F.3d 1241, 1245 (9th Cir. 1997). To demonstrate constructive possession the government must prove a sufficient connection between the defendant and the contraband to support the inference that the defendant had dominion and control over the contraband.

Access alone cannot, without more, prove knowledge United States v. Highsmith, 268 F.3d 1141, 1142 (9th Cir. 2001), holding that a defendant's access to a firearm found in a cohorts bedroom did not establish knowledge and therefore did not prove possession.; Cazares, 121 F.3d, at 1245 Where as here a residence is jointly occupied, the mere fact that contraband is discovered at the residence will not without more provide evidence (citing United States v. Reese, 775 F.2d 1066, 1073, 9th Cir. 1985).

GROUND THREE

Did the search warrant establish who had dominion and control of the rented hotel room? Was the dominion and control clause of the affidavit for the warrant established that authorizes the seizure of evidence?

State v. Kealotta, 62 HAW, 166, 613 P.2d 645 (1980). Language authorizing seizure of property trending to establish identity of persons in control of the premises; see also Anderson v. Maryland, 427 U.S. 463, 479-482 49 L.Ed 2d 627 S.Ct. 2737 (1876).

GROUND FOUR

Mr. Kyllo argues that Government violated his right to counsel by and through the prosecution. This constitutional violation occurred while Mr. Kyllo was still a defendant. Prior to trial, Mr. Kyllo was arrested at the Super 8 motel, room 203 on April 19th, 2017. Upon arrest, Government officials advised Mr. Kyllo of his right to remain silent. This fact is supported in the initial discovery packet, of which Mr. Kyllo is having problem acquiring. This discovery has not been relinquished by the state nor counsel. After Mr. Kyllo's arrest, he was charged with possession with intent to deliver heroin and methamphetamine defined under cause. After being booked on above charges and appointed counsel, Government investigating officials for the state had Mr. Kyllo pulled from his cell and taken to a room. The officer who initially extracted Mr. Kyllo from his cell informed him that his attorney had come to see him. The officer then locked Mr. Kyllo into attorney's visiting room. Immediately after this, Government official working for the prosecution pushed papers in front of Mr. Kyllo to sign. Throughout the trial proceedings, Mr. Kyllo tried and failed to address this Miranda Violation issue Rp 2, 8, 18 p.50; also counsel's brief.

Had counsel chosen to investigate that nexus between Mr. Kyllo and the investigator for the state, the prosecution's sole evidence obtained by trickery would have been tossed. The state's tactics employed to establish Mr. Kyllo's guilt go beyond the pale.

1) Did the prosecutor by and through Officer Beedle unconstitutionally and unethically violate Mr. Kyllo's Fifth and Sixth Amendment right to counsel to infer his guilt?

2) Was Mr. Kyllo's Sixth Amendment right to counsel violated by government's interrogation outside appointed counsel's presence?

3) As the question of fairness and Constitutional Right of Mr. Kyllo, should this court mandate that he receive evidentiary hearing to investigate the possible of Constitutional rights of the Fifth and Fourteenth Amendments of due process by State's investigative government offices?

A prosecutor may not order a police officer to do what the prosecutor may not do RpC 5-3, 1 State V. Miller, 600 N.W. 2d 457, 464 (1999). Prosecutors will be responsible for police officers contact with a represented individual if the "orders or with knowledge of the specific conduct, ratifies the conduct involved."

The appointment of an attorney at first appearance of arraignment does not bar an officer from contacting a defendant for an interview. The officer must, however, immediately tender Miranda warnings and must obtain a voluntary waiver of the defendant's right to remain silent and the right to have an attorney present for the interview (Montejo v. Louisiana, 556, U.S. 778, 129 S.Ct. 173 L.Ed.2d 955 2009).

Mr. Kyllo was denied admissibility hearing before introducing evidence of any custodial statement or any statement made to a state actor. The court must hold hearing to determine if the statement was freely given (Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 IAL.R.3d 1205, 1964).

The Fifth Amendment clearly states, no person shall be compelled in a criminal case to be a witness against himself.

Mr. Kyllo asks this court as a matter of law, even if though the record was suppressed of the facts pertaining to the in-custody interrogation. The dates and signature of the notice to contest the seizure reflects Mr. Kyllo was appointed counsel prior to the notice given to Mr. Kyllo and as a matter of law, why hadn't Mr. Kyllo's appointed counsel been supplied with the seizure notice and through appointed counsel, Mr. Kyllo should have been served the notice of seizure by and through his appointed counsel. Had Mr. Kyllo been served notice through counsel, he could have been advised of his rights accordingly. It should be apparent that had counsel, Mr. Baldwin, been aware of the details of how Mr. Kyllo was served the seizure notice, counsel would not have had to question Mr. Kyllo or Detective Thoma for facts relating to the incident.

Article 1 § 9, no person shall be compelled in any case be it civil or criminal to give evidence against himself or be twice put in jeopardy for the same offense. The Sixth Amendment right to counsel attaches police may not interrogate the suspect without waiver of Miranda right. Patterson v. Illinois, 487, U.S. 285, 108 S.Ct. 2389, 101 L.Ed.2d 261 (1988).

As previously stated above in Ground Four had Mr. Kyllo's counsel investigated, he would have discovered the timeline of the event of how the state procured their link of appellant and the seizure money use to infer appellant's guilt at the trial. The outcome would have been different had Mr. Kyllo been entitled to address the court and record on 2/8/2018. So trial court would have been forced to address the issue and Mr. Kyllo may have received a fair trial as its the prosecutor by and through agents of the state deceived Mr. Kyllo to acquire the sole evidence to place Mr. Kyllo inside Mr. Wiggin's backpack. As previously stated, the tactics by the prosecution and

its agents go beyond the pale. Mr. Kyllo's attorney should have investigated the above situation further.

The Sixth Amendment imposes on counsel a duty to investigate because reasonable effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options.

Pursuant to Strickland v. Washington, 466, U.S. 668, 8L.Ed 674, 104 S.Ct. 2052 (1984). At a bare minimum a lawyer must interview potential witnesses and make an independent investigation of the facts and circumstances. Mr. Kyllo asks the appeals court to find that pursuant to the interest of justice, Mr. Kyllo was deceived outside counsel's presence to acquire their sole evidence to place with the backpack.

Mr. Kyllo asks to be remanded back to Cowlitz County Jail and placed on Superior Court docket to have these issues addressed in an open court. This request is predicated on foundation of the above cited Constitutional issues of law. Mr. Kyllo also cites CRv(8.3)(6) in the furtherance of justice after notice and hearing may dismiss any criminal prosecution due to arbitrary action of governmental misconduct when there has been prejudice to the right of the accused, such as right to a fair trial.

RAP 8.3 except where prohibited by statute, the appellate court had the authority to issue orders before or after acceptance or review or in an original action under title of those rules to ensure effective and equitable review inclusioner authority to grant injunctive or other relief to a party State v. Bell, 23 Ariz., 169, 531 p.2d 545 (1975), rule 32 has it aim the establishment of proceedings to determine the facts underlying a defendant's claim for relief when such facts are not otherwise available, rule 2.2 is reviewed with this aim in mind, we are of the opinion that the preclusion of

post conviction under this rule on the ground that the matter is still able to be raised on direct appeal applies only to those matters in which a sufficient factual basis exists in the record for the appellate court to resolve the matter.

Conclusion

For the foregoing reasons and arguments addressed in appellants opening brief, Mr. Kyllo requests this court to consider his statement of additional grounds. RAP 10.10 for relief of judgment and sentence in the alternative, remand Mr. Kyllo back to trial court for evidentiary hearing to investigate Miranda Right's violation or, in alternative, vacate all charges.

Ken Kyllo

Kenneth L. Kyllo

The Second Circuits logic applies with special force in the context of 'pro se' litigants. "A document filed 'pro se' is 'to be liberally construed', and a 'pro se' complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" ERICKSON v. PARDUS, ____U.S.____,127S.Ct.2197,2200,167 L.Ed.2d1081(2007)(per curium) (quoting ESTELLE v. GAMBLE, 429U.S.97,106,97S.Ct.285,50L.Ed.2d 251(1976)(internal citations omitted); see also CORJASSO v. AYERS, 278F.3d874,878(9th Cir.2002)("Pro se habeas petitioners may not be held to the same technical standards as litigants represented by counsel"); UNITED STATES v. SEESING,234F.3d456,462(9th Cir. 2001)("Pro se complaints and motions from prisoners are to be liberally construed.")